

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EMELDA ONYEMA MBARA
a.k.a. EMELDA MARY ACHODO
10288 Porto Moniz Way
Elk Grove, CA 95757

Registered Nurse License No. 679062

Respondent.

Case No. 2010-51

OAH No. N-20090762

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on March 15, 2010.

IT IS SO ORDERED February 11, 2010.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
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7 *Attorneys for Complainant*

ORIGINAL

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-51

13 **EMELDA ONYEMA MBARA, A.K.A.**
14 **EMELDA MARY ACHODO**
10228 PORTO MONIZ WAY
ELK GROVE, CA 95757

OAH No. N-20090762

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Registered Nurse License Number 679062

16 Respondent.

17
18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
22 Board of Registered Nursing. She brought this action solely in her official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Leslie A. Burgermyer, Deputy Attorney General.

25 2. Respondent Emelda Onyema Mbara (Respondent) is represented in this proceeding
26 by attorney Lara Shapiro, Esq., whose address is Lara Shapiro, Esq., 4145 Via Marina, #324
27 Marina Del Rey, CA 90292.

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3. On or about May 10, 2006, the Board of Registered Nursing issued Registered Nurse License No. 679062 to Emelda Onyema Mbara, a.k.a. Emelda Mary Achodo, (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2010-51 and will expire on November 30, 2011, unless renewed.

JURISDICTION

4. Accusation No. 2010-51 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 10, 2009. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 2010-51 is attached hereto, marked as Exhibit A, and incorporated herein by this reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2010-51. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2010-51.

1 9. Respondent agrees that her Registered Nurse License is subject to discipline and she
2 agrees to be bound by the Board of Registered Nursing (Board)'s imposition of discipline as set
3 forth in the Disciplinary Order below.

4 **RESERVATION**

5 10. The admissions made by Respondent herein are only for the purposes of this
6 proceeding, or any other proceedings in which the Board of Registered Nursing or other
7 professional licensing agency is involved, and shall not be admissible in any other criminal or
8 civil proceeding.

9 **CONTINGENCY**

10 11. This stipulation shall be subject to approval by the Board of Registered Nursing.
11 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
12 Registered Nursing may communicate directly with the Board regarding this stipulation and
13 settlement, without notice to or participation by Respondent or her counsel. By signing the
14 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
15 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
16 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
17 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
18 action between the parties, and the Board shall not be disqualified from further action by having
19 considered this matter.

20 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
21 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
22 effect as the originals.

23 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
28 writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 679062 issued to Respondent Emelda Onyema Mbara (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

SEVERABILITY CLAUSE: Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **OBEY ALL LAWS:** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **COMPLY WITH THE BOARD'S PROBATION PROGRAM:** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times

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1 maintain an active, current license status with the Board, including during any period of
2 suspension.

3 Upon successful completion of probation, Respondent's license shall be fully restored.

4 3. **REPORT IN PERSON:** Respondent, during the period of probation, shall appear
5 in person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE:**
7 Periods of residency or practice as a registered nurse outside of California shall not apply toward
8 a reduction of this probation time period. Respondent's probation is tolled, if and when she
9 resides outside of California. Respondent must provide written notice to the Board within 15 days
10 of any change of residency or practice outside the state, and within 30 days prior to re-
11 establishing residency or returning to practice in this state.

12 Respondent shall provide a list of all states and territories where she has ever been licensed
13 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide infor-
14 mation regarding the status of each license and any changes in such license status during the term
15 of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
16 license during the term of probation.

17 5. **SUBMIT WRITTEN REPORTS:** Respondent, during the period of probation,
18 shall submit or cause to be submitted such written reports/declarations and verification of actions
19 under penalty of perjury, as required by the Board. These reports/declarations shall contain
20 statements relative to Respondent's compliance with all the conditions of the Board's Probation
21 Program. Respondent shall immediately execute all release of information forms as may be
22 required by the Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
24 state and territory in which she has a registered nurse license.

25 6. **FUNCTION AS A REGISTERED NURSE:** Respondent, during the period of
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24
27 hours per week for 6 consecutive months or as determined by the Board.

28 For purposes of compliance with the section, "engage in the practice of registered nursing"

1 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
2 non-direct patient care position that requires licensure as a registered nurse.

3 The Board may require that advanced practice nurses engage in advanced practice nursing
4 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

5 If Respondent has not complied with this condition during the probationary term, and
6 Respondent has presented sufficient documentation of her good faith efforts to comply with this
7 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
8 extension of Respondent's probation period up to one year without further hearing in order to
9 comply with this condition. During the one year extension, all original conditions of probation
10 shall apply.

11 7. **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS:**

12 Respondent shall obtain prior approval from the Board before commencing or continuing any
13 employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to
14 the Board all performance evaluations and other employment related reports as a registered nurse
15 upon request of the Board.

16 Respondent shall provide a copy of this Decision to her employer and immediate
17 supervisors prior to commencement of any nursing or other health care related employment.

18 In addition to the above, Respondent shall notify the Board in writing within seventy-two
19 (72) hours after she obtains any nursing or other health care related employment. Respondent
20 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
21 separated, regardless of cause, from any nursing, or other health care related employment with a
22 full explanation of the circumstances surrounding the termination or separation.

23 8. **SUPERVISION:** Respondent shall obtain prior approval from the Board
24 regarding Respondent's level of supervision and/or collaboration before commencing or
25 continuing any employment as a registered nurse, or education and training that includes patient
26 care.

27 Respondent shall practice only under the direct supervision of a registered nurse in good
28 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods

1 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
2 approved.

3 Respondent's level of supervision and/or collaboration may include, but is not limited to the
4 following:

5 (a) Maximum - The individual providing supervision and/or collaboration is present in
6 the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
8 care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
10 person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health care
12 setting, the individual providing supervision and/or collaboration shall have person-to-person
13 communication with Respondent as required by the Board each work day. Respondent shall
14 maintain telephone or other telecommunication contact with the individual providing supervision
15 and/or collaboration as required by the Board during each work day. The individual providing
16 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
17 patients' homes visited by Respondent with or without Respondent present.

18 9. **EMPLOYMENT LIMITATIONS:** Respondent shall not work for a nurse's
19 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
20 traveling nurse, or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
22 registered nursing supervision and other protections for home visits have been approved by the
23 Board. Respondent shall not work in any other registered nursing occupation where home visits
24 are required.

25 Respondent shall not work in any health care setting as a supervisor of registered nurses.
26 The Board may additionally restrict Respondent from supervising licensed vocational nurses
27 and/or unlicensed assistive personnel on a case-by-case basis.
28

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined work-site(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **COMPLETE A NURSING COURSE(S)**: Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **COST RECOVERY**: Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$6,100.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **VIOLATION OF PROBATION**: If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

1 If during the period of probation, an accusation or petition to revoke probation has been
2 filed against Respondent's license or the Attorney General's Office has been requested to prepare
3 an accusation or petition to revoke probation against Respondent's license, the probationary
4 period shall automatically be extended and shall not expire until the accusation or petition has
5 been acted upon by the Board.

6 13. **LICENSE SURRENDER:** During Respondent's term of probation, if she ceases
7 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
8 probation, Respondent may surrender her license to the Board. The Board reserves the right to
9 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
10 take any other action deemed appropriate and reasonable under the circumstances, without further
11 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
12 longer be subject to the conditions of probation.

13 Surrender of Respondent's license shall be considered a disciplinary action and shall
14 become a part of Respondent's license history with the Board. A registered nurse whose license
15 has been surrendered may petition the Board for reinstatement no sooner than the following
16 minimum periods from the effective date of the disciplinary decision:

17 (a) Two years for reinstatement of a license that was surrendered for any reason other
18 than a mental or physical illness; or

19 (b) One year for a license surrendered for a mental or physical illness.

20 **ACCEPTANCE**

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Lara Shapiro, Esq. I understand the stipulation and the effect it
23 will have on my Registered Nurse License. I enter into this Stipulated Settlement and
24 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
25 Decision and Order of the Board of Registered Nursing.

26
27 DATED: 12-18-09

Emelda Onyema Mbara
EMELDA ONYEMA MBARA
Respondent

1 I have read and fully discussed with Respondent Emelda Onyema Mbàra the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED:12/18/09

Lara Shapiro
LARA SHAPIRO, ESQ.
Attorney for Respondent

6
7
8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully sub-
10 mitted for consideration by the Board of Registered Nursing of the Department of Consumer
11 Affairs.

12
13 Dated: _____

Respectfully Submitted,

14 EDMUND G. BROWN JR.
Attorney General of California
15 ARTHUR D. TAGGART
Supervising Deputy Attorney General
16

17
18 LESLIE A. BURGERMYER
Deputy Attorney General
19 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondent Emelda Onyema Mbara the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.
4

5 DATED: _____

LARA SHAPIRO, ESQ.
Attorney for Respondent

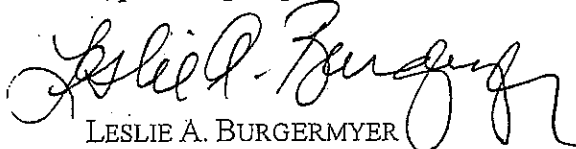
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully sub-
10 mitted for consideration by the Board of Registered Nursing of the Department of Consumer
11 Affairs.

12
13 Dated: 12/18/09

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

17 
18 LESLIE A. BURGERMYER
19 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2010-51

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
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6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-51

13 **EMELDA ONYEMA MBARA, a.k.a.**
14 **EMELDA MARY ACHODO**
10288 Porto Moniz Way
Elk Grove, California 95757

A C C U S A T I O N

15 Registered Nurse License No. 679062

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise Bailey, M.Ed., RN, (Complainant) brings this Accusation solely in her official
21 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about May 10, 2006, the Board of Registered Nursing issued Registered Nurse
24 License Number 679062 (License) to Emelda Onyema Mbara, a.k.a. Emelda Mary Achodo
25 (Respondent). The License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on November 30, 2009, unless renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

REGULATORY PROVISIONS

6. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

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COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative lawjudge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BACKGROUND

9. While on duty at Applewood Care Center, Sacramento, California, Respondent was assigned to care for R.B., an 82 year-old patient originally admitted to the facility on October 21, 2005, with a diagnosis that included decubitus ulcer of the lower back, atrial fibrillation, malnutrition, and hypertension. In a conversation with Respondent, R.B. informed her that he wanted whatever measures could be taken to sustain his life in the event of a catastrophic occurrence. Further, R.B.'s chart did not contain a "Do Not Resuscitate" order because R.B. had recently informed Respondent he wanted whatever measures were necessary to sustain his life.

10. On February 4, 2007, during his dinner, R.B. choked on a bolus of food and became unresponsive. Respondent performed CPR, which consisted of chest compressions and two breaths. Respondent did not continue CPR on R.B., who was in full code. When the paramedics arrived, Respondent was standing next to the bed and no longer performing CPR. The paramedics attempted CPR for approximately 20 minutes before determining R.B. was deceased.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about February 4, 2007, while on duty as a registered nurse at Applewood Care Center, Sacramento, California, and caring for R.B., Respondent committed acts constituting gross negligence as defined in Regulation 1442 by failing to continue with CPR on R.B. who was in full code. The circumstances are set forth in paragraphs 9 and 10, above.

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1
2
3 SECOND CAUSE FOR DISCIPLINE

4 (Incompetence)

5 12. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
6 on the grounds of unprofessional conduct, in that on or about February 4, 2007, while on duty as a
7 registered nurse at Applewood Care Center, Sacramento, California, and caring for R.B.,
8 Respondent committed acts constituting incompetence as defined in Regulation 1443, as more
9 particularly set forth in paragraph 11, above. The circumstances are set forth in paragraphs 9 and
10 10, above.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct)

13 13. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(1),
14 on the grounds of unprofessional conduct, as more particularly set forth in paragraphs 11 and 12,
15 above.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Registered Nursing issue a decision:

19 1. Revoking or suspending Registered Nurse License Number 679062, issued to
20 Emelda Onyema Mbara, a.k.a. Emelda Mary Achodo;

21 2. Ordering Emelda Onyema Mbara, a.k.a. Emelda Mary Achodo, to pay the Board of
22 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
23 pursuant to Business and Professions Code section 125.3;

24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: 7/31/09

26 *Louise Bailey*
27 LOUISE BAILEY, M.Ed., RN
28 Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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